

### **REMARKS**

By this amendment, Claims 1, 8-10, 13, 17, and 20 are currently amended, Claims 2-6, 11, 15-16, and 18-19 remain as originally presented, and Claims 7, 12, and 14 remain as previously presented.

The above-identified Office Action has been reviewed and the references carefully considered. In view hereof, the present amendment is submitted. It is contended that by the present amendment all bases of rejection set forth in the Office Action are traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Alternatively, the Applicant respectfully requests entry of the currently amended claims so as to place the claims in better condition for allowance.

The Examiner's rejections will be addressed in the order presented in the Detailed Action section of the Office Action.

### **Claim Rejections 35 U.S.C. § 112**

The Examiner has rejected Claims 10, 11, and 20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Applicant has amended Claim 10 to clarify that the annular lip is formed from a non-toxic flexible material, while the first portion is formed from non-toxic hard material. The Applicant respectfully contends that the amendment to Claim 10 overcomes the rejection of Claims 10 and 11.

As to Claim 20, the Applicant has amended Claim 20 as suggested by the Examiner. Accordingly, the Applicant respectfully requests the rejection of Claims 10, 11, and 20 under 35 U.S.C. § 112.

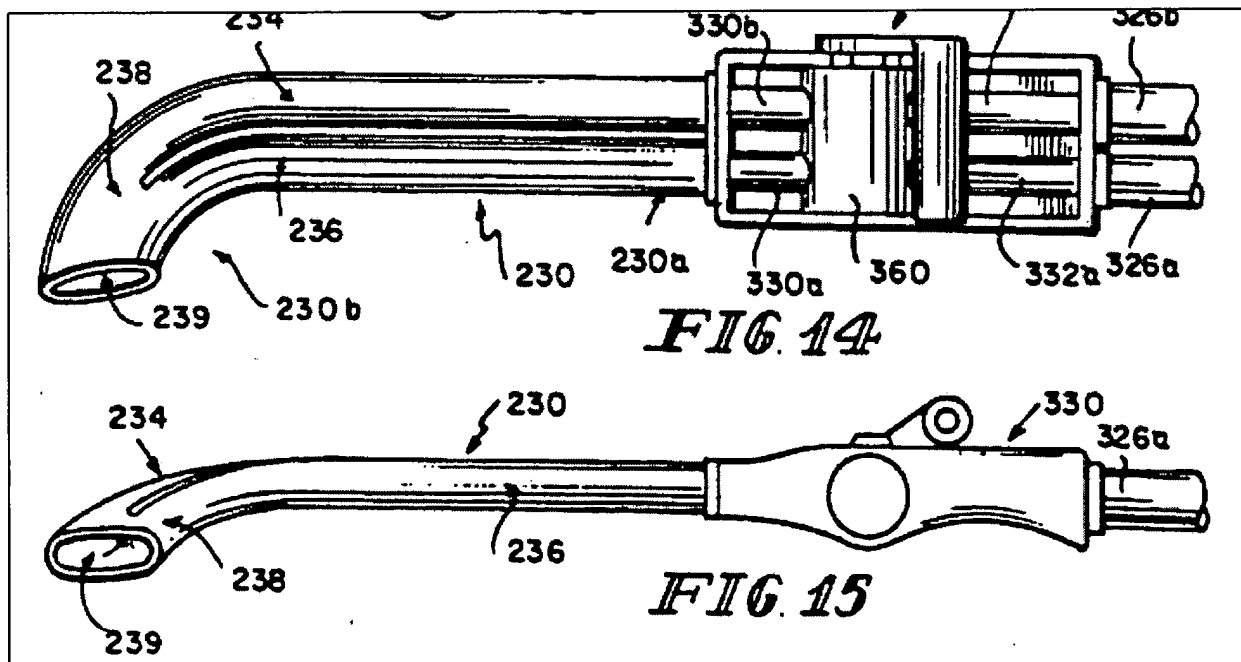
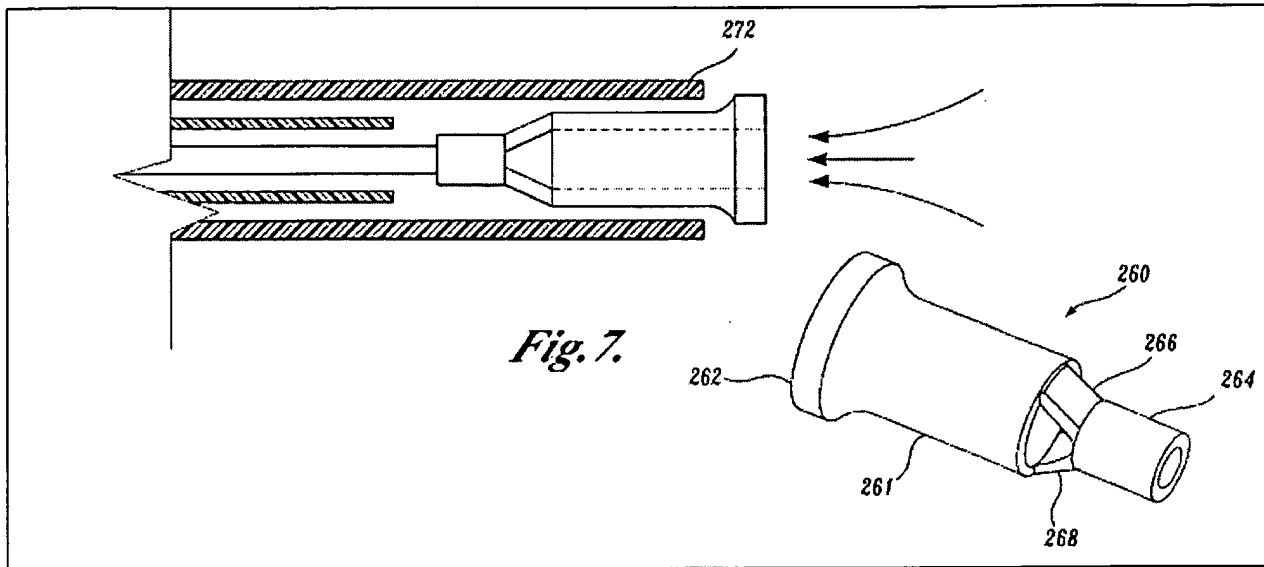
### **Claim Rejections 35 U.S.C. § 103**

The Examiner has rejected Claims 1-7, 9-10, 13, 15, and 16 under 35 U.S.C. § 103(a) as being obvious over Clement in view of U.S. Patent No. 6,579,298 to Bruneau et al. 35 U.S.C. § 103(a) states that:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Applicant traverses the Examiner's rejections.

In an effort to expedite and facilitate prosecution, and acting without prejudice, the Applicant has amended Claim 1. The currently amended Claim 1 now more clearly defines that the frusto-conical end includes a "toroidal enveloping lip sized to envelop and engage a foreign body drawn thereagainst . . . ." A toroidal enveloping lip, such as in the shape of a donut, is not disclosed by either Clement or Bruneau. Both Clement and Bruneau have blunt ends – not curved or rounded surfaces such as the "toroidal enveloping lip" required by Claim 1. See FIG. 7 of Bruneau and FIGS. 14 and 15 of Clement below.



The reason that the devices disclosed by Clement and Bruneau do not disclose a toroidal enveloping lip as required by Claim 1 is because the devices in Clement and Bruneau perform a different function than that of the claimed invention. The subject matter of Claim 1 is directed toward a device for engaging and removing a foreign object from a cavity such as a nose or ear by applying a vacuum, engaging the toroidal lip against the object thereby

creating suction, and removing the device and object. The invention disclosed by the Applicant works on the premise that the toroidal lip has a geometry which is capable of contacting the foreign body about the entire perimeter of the lip, thereby creating suction – regardless of the size or shape of the foreign object. Such structure leads to versatility in use, and accordingly, marketplace value.

Conversely, the end of the device in Clement is intended to do nothing more than provide an entryway for the exchange of fluids between the device and an individual's body. It is nothing more than a basic tube. It is not designed to engage against any objects, and therefore it has a basic end which is not toroidal in shape.

In addition, Bruneau discloses an apparatus having an ablation burr for removing lesions from one's blood vessels. The "enveloping lip" in Bruneau, as cited by the Examiner, is actually a rotating ablation burr for removing lesions (col. 8, lines 49-67). The ablation burr has an interior lumen connected to a vacuum source for removing the aspirated particles. However, again, this device is for removing lesions and drawing in liquids – not engaging objects about the outer portion of the lip.

Notwithstanding that Clement and Bruneau collectively fail to disclose a toroidal enveloping lip as required by Claim 1, it would also not have been obvious to combine these prior art references. First, the device in Bruneau is for use in removing lesions from the interior of blood vessels. While this involves a medical procedure on a human, it is completely separate from the removal of an object from a cavity such as the ear or nose. As such, Bruneau is from a sufficiently divergent technical field, and therefore it would not have been obvious to one of ordinary skill in the art, such as an ear/nose/throat doctor, to

combine features from a rotating ablation tool, which is used by someone such as a vascular surgeon and would be unknown to an ear/nose/throat doctor.

Secondly, the device disclosed in Bruneau performs an entirely unique function from that of either the subject matter of Claim 1 or that of Clement. The device in Bruneau rotates and scrapes lesions from blood vessel walls, whereas the claimed invention removes objects from cavities such as an ear via suction. And for that matter, Clement performs a third unique function, i.e., exchanging fluids between the device and a body.

Although the legal precedent for combining references to substantiate a rejection under § 103 has been lessened by *KSR v. Teleflex*, there still must be some basis for one having ordinary skill in the art to combine references. Here, there is none. Notwithstanding that neither Clement nor Bruneau disclose a toroidal enveloping lip, it is clear that neither Clement nor Bruneau relate to the engagement of an object about the end of the device for removal from the body. There is simply no suggestion or reason provided in the prior art why one of ordinary skill in the art would combine Clement and Bruneau to perform a third unique function. The concept of engaging an object about the outer lip via suction is not contemplated by the prior art. Therefore, it would not have been obvious to one of ordinary skill in the art to combine the unrelated teachings of Clement and Bruneau to create a device having a third unique function.

Accordingly, the Applicant respectfully contends that (1) neither Clement nor Bruneau disclose a toroidal enveloping lip; (2) it would not have been obvious to modify either of the references as such; (3) it would not have been obvious to combine Clement and Bruneau because Bruneau is from a divergent technical field; and (4) it would not have been

obvious to combine Clement and Bruneau because both Clement and Bruneau operate in a manner unique to each other and totally different from that of the claimed invention, and consequently there would have been no reason whatsoever why one having ordinary skill in the art would combine Clement and Bruneau to achieve a third function which is not contemplated by the cited prior art. Accordingly, the Applicant respectfully requests the Examiner enter the amendment and withdraw the rejection of Claim 1.

As to Claims 2-7, 9-10, 15, and 16, Applicant relies upon the arguments presented hereinabove in respectfully requesting that the Examiner enter the claim amendments and withdraw the rejections of Claims 2-7, 9-10, 15, and 16.

In an effort to expedite and facilitate prosecution, and acting without prejudice, the Applicant has amended Claim 13 to now require the toroidal enveloping lip as claimed by Claim 1. Therefore, the Applicant relies upon the arguments presented hereinabove in respectfully requesting that the Examiner enter the claim amendments and withdraw the rejection of Claim 13.

The Examiner has rejected Claims 8, 12, 14, and 17-20 as being obvious over Clement in view of Bruneau, and in further view of U.S. Patent No. 4,380,998 to Kieffer, III et al.

Claims 8, 12, 14, and 17-19 are dependent upon either Claims 1 or 13. As such, the Applicant relies upon the arguments presented hereinabove in respectfully requesting that the Examiner enter the claim amendments and withdraw the rejections of Claims 8, 12, 14, and 17-19.

As to Claim 20, in an effort to expedite and facilitate prosecution, and acting without prejudice, the Applicant has amended Claim 20 to now be directed toward a kit including a plurality of uniquely-sized insertion tips for engaging and enveloping foreign objects of varying size. The Applicant contends that it would not have been obvious to one of ordinary skill in the art to combine Clement and Bruneau for the reasons stated above. In addition, neither Clement, Bruneau, nor Kieffer disclose a kit including a plurality of uniquely-sized insertion tips. The Applicant respectfully submits that Clement, Bruneau, and Kieffer collectively fail to disclose each and every limitation of Claim 20.

In addition, as argued above, since none of the cited prior art references contemplate the unique function of enveloping and engaging a foreign body for removal from a cavity, it would not have been obvious to merely duplicate parts because there is no suggestion or reason provided by the cited prior art why multiple insertion tips would be desirable or provide an advantage.

Since Clement, Bruneau, and Kieffer collectively fail to disclose each and every limitation of Claim 20, the Examiner's argument that it would have been obvious to one of ordinary skill in the art to combine the teachings of Clement Bruneau, and Kieffer lacks merit because Clement, Bruneau, and Kieffer do not collectively teach the present invention. Modification of the references to meet the Applicant's claimed invention would not be obvious under 35 U.S.C. § 103. In addition, none of the references add the deficiencies to either of the other references necessary to negate the patentability of Claim 20. Accordingly, the Applicant respectfully requests the Examiner enter the claim amendments and withdraw the rejection of Claim 20.

It is respectfully submitted by this amendment that all bases of rejection and objection have been traversed and overcome. Thus, it is contended that in the absence of more pertinent art, the application has now been placed in a condition for allowance. A notice to this effect is, therefore, respectfully requested.

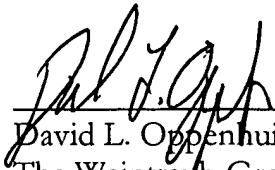
Alternatively, the Applicant respectfully contends that, by this amendment, the number of appealable issues has been narrowed, and the claims have been placed in better condition for appeal. As such, the Applicant respectfully requests entry of the present amendment.

If the Examiner feels that prosecution of this application can be expedited, then he is courteously requested to place a telephone call to the Applicant's attorney at the number listed below.

This submission is being made in accordance with 37 C.F.R. § 1.34. The undersigned attorney is not an attorney of record, but is acting under the authority of attorney of record Arnold S. Weintraub (Reg. No. 25,523), who is currently unavailable to act on behalf of the Applicant.

Respectfully submitted,

Dated: July 28, 2009

  
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